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AGENCY DIVISION OF CENTRAL SERVICES
DEPARTMENT OR AGENCY NUMBER AEA
CONTRACT ROUTING NUMBER 03 AEA 00330

CONTRACT

THIS CONTRACT ("**Contract**"), made this 18th day of April, 2003, by and between the State of Colorado for the use and benefit of the Department of Personnel and Administration, 1600 Broadway, Suite 1030, Denver, Colorado, 80202, hereinafter referred to as the "**State**", and U.S. Bank National Association ND, 1010 South Seventh St., Minneapolis, MN 55415, hereinafter referred to as the "**Contractor**".

WHEREAS, authority exists in the Law and Funds have been budgeted, appropriated and otherwise made available and a sufficient uncommitted balance thereof remains available for encumbering and subsequent payment of this contract.

WHEREAS, required approval, clearance and coordination has been accomplished from and with appropriate agencies; and

WHEREAS, the Contractor has been selected in compliance with the provisions of the Procurement Code, RFP# PFT-0100-RS, dated May 22, 2002, as the responsible offeror whose proposal is most advantageous to the State, price and other factors considered; and

WHEREAS, the Department of Personnel, pursuant to 24-30-1101 C.R.S., furnishes services effectively utilizing resources, is acting on behalf of all state departments, institutions, and agencies; and

WHEREAS, the Contractor makes available, and the State wishes to acquire, credit services to be used by state employees who travel in furtherance of their official duties, pursuant to 24-30-1118 C.R.S.; and

WHEREAS, the parties desire to establish greater program efficiencies and gain increased benefits from the on-going business relationship.

NOW THEREFORE, it is hereby agreed that:

1. SCOPE.

A. **Precedence of Terms of this Contract, Rules of Construction.** The State of Colorado issued Request for Proposal # PFT-0100-RS, June 28, 2002, identified as Exhibit A and incorporated into this Contract by reference ("**RFP**"). The Contractor's proposal as clarified in the Contractor's written clarifications and revised in the Contractor's best and final offer for travel card services will be identified as Exhibit B and incorporated into this Contract by reference ("**Proposal**"). In the event of conflicts or inconsistencies between this Contract, the RFP, the Proposal, and any exhibits or attachments, such conflicts or inconsistencies shall be resolved by reference to the documents in the following order of priority:

- (1) Colorado Special Provisions.
- (2) This Contract.

(3) Any Exhibits to this Contract. Notwithstanding the foregoing, in the event any provision within an Exhibit explicitly modifies any term of this Contract, then the Exhibit governs to the extent necessary to remove the conflict or inconsistency.

(4) The Contractor's Proposal to State's RFP, Exhibit B, as amended by the Contractor's best and final offer.

(5) The State's RFP. In the event of a conflict between the RFP and the Proposal, the Proposal shall govern to the extent to remove the conflict or ambiguity.

B. **Purpose and Services.** For the term hereof, and upon the terms and subject to the conditions of this Contract, Contractor hereby agrees to provide State with the Corporate Card Program described herein ("**Corporate Card Program**") and issue Corporate Cards to Employee Cardholders and establish corresponding Corporate Card accounts. Each Corporate Card may be used by the Employee Cardholder to obtain business related cash advances and to charge purchases of travel and entertainment related goods and services which are primarily for or incidental to the business of State, provided that such Corporate Card is valid and has not been canceled by Contractor.

In this Contract, "**Corporate Cards**" mean the Visa® Corporate Cards issued by Contractor to designated employees ("**Employee Cardholders**") of State, Affiliate(s) and/or Participant(s). "**Affiliate**" shall be any State agency, institution of higher education or political subdivision that is required to provide financial statements to Contractor for Contractor's review and executes a Participating Affiliate Addendum with Contractor to participate under this Contract. Such Affiliate is liable for its designated Employee Cardholders only as provided under the terms of this Contract. "**Participant**" shall be any State agency, institution of higher education or political subdivision that does not provide financial statements to Contractor for Contractor's review nor enters into a Participating Affiliate Addendum with Contractor. The State is liable for designated Employee Cardholders of Participant as if such persons were employed by the State as provided under the terms of this Contract. All Participants must be listed on a Participation Addendum to be signed by the State. "**Legitimate Business Charges**" shall be defined as those Charges that benefit the State either directly or indirectly. "**Personal Charges**" are those Charges that are not Legitimate Business Charges as defined above. "**Fraudulent Charges**" are those Charges which are not authorized by State or the Employee Cardholder and do not directly or indirectly benefit State, Affiliates, Participants and/or Employee Cardholders. "**Delinquent Charges**" are those Charges which remain unpaid thirty (30) days past the date of the first billing. "**Charge**" shall be defined as any account activity that has a debit value. "**Contract**" and "**Agreement**" are used synonymously. "**Statement Date**" means the date indicated as such on a Statement.

Contractor shall provide ghost accounts (or centrally billed airfare accounts) and referred to by Contractor as "Central Travel System" or "CTS" accounts, sub accounts, and individual accounts (collectively, "**Non-Plastic Account(s)**") to State and Affiliates as described herein ("**Non-Plastic Accounts Program**"). Such accounts shall be implemented through an electronic program, as required in Exhibit A of this Contract and described in Exhibit B. State Travel Program Manager may request in writing that Contractor establish one (1) or more Non-Plastic Account(s). In connection with such request, State Travel Program Manager will designate State employee(s) that are authorized to use such Non-Plastic Account(s) to purchase goods and services for the benefit of State. Affiliate Travel Program Manager may request in writing that Contractor establish one (1) or more Non-Plastic Account(s). In connection with such request, Affiliate Travel Program Manager will designate Affiliate employee(s) that are authorized to use such Non-Plastic Account(s) to purchase goods and services for the benefit of Affiliate.

With the approval of Contractor, State may establish a Non-Plastic Account relationship with any entity which provides goods and/or services to State. State shall provide Contractor with the name and address of each provider of goods and/or services with whom the State establishes a Non-Plastic Account relationship. State will provide each provider of goods and/or services instructions regarding the handling of the States purchases. Each provider of goods and/or services shall not be deemed to be an agent of the Contractor. No fee shall be payable by Contractor to any provider of goods and/or services for performing services hereunder.

With the approval of Contractor, Affiliate may establish a Non-Plastic Account relationship with any entity which provides goods and/or services to Affiliate. Affiliate shall provide Contractor with the name and address of each provider of goods and/or services with whom the Affiliate establishes a Non-Plastic Account relationship. Affiliate will provide each provider of goods and/or services instructions regarding the handling of the Affiliate's purchases. Each provider of goods and/or services shall not be deemed to be an agent of the Contractor. No fee shall be payable by Contractor to any provider of goods and/or services for performing services hereunder.

Contractor hereby agrees to provide State, Affiliate(s) and Participant(s) with the Event Card Program described herein ("**Event Card Program**") and issue Event Cards to Employee Cardholders designated by the State Travel Program Manager or the Affiliate Travel Program Manager and establish corresponding Event Card accounts. In this Contract, "**Event Cards**" mean the Visa® Corporate Cards issued by Contractor to designated Employee Cardholders of State, Affiliate(s) and/or Participant(s). Each Event Card may be used by the Employee Cardholder to obtain business related cash advances and to charge purchases of travel and entertainment related goods and services which are primarily for group and/or meeting event(s) for the State, an Affiliate or a Participant, provided that such Event Card is valid and has not been canceled by Contractor.

Contractor will provide an internet-based program management tool for the State's use. This tool will allow the State access to program information in real time, 24 hours a day. Contractor currently utilizes AccessOnline. Use of AccessOnline is subject to the terms and conditions of an AccessOnline Subscriber Agreement, attached hereto as Exhibit L and incorporated herein by reference.

C. Corporate Card and Event Card Issuance and Renewal or Replacement. Contractor shall issue a Corporate Card or Event Card to employees designated by State, Affiliates and Participants, and establish a corresponding Corporate Card or Event Card account, subject to the following conditions:

- (1) Each such designee shall be an employee of State, Affiliate or Participant and shall have a business or commercial purpose for a Corporate Card or Event Card.
- (2) Contractor or State, Affiliate, or Participant may require proposed Employee Cardholders to sign a "**Corporate Card Application**", to be countersigned by State, Affiliate or Participant. If such Corporate Card Application is for an Event Card, such Corporate Card Application will be so designated in writing by State, Affiliate or Participant.
- (3) Each Employee Cardholder will receive upon issuance of a Corporate Card or Event Card in the name of the Employee Cardholder on behalf of the State, Affiliate or Participant, a cardholder agreement from Contractor that provides the terms and conditions for Employee Cardholder's use of the Corporate Card or Event Card and related account, which may be amended from time to time by Contractor (the "**Cardholder Agreement**"). By signing the back of Corporate Card or Event Card and using the Corporate Card or Event Card, Employee Cardholder acknowledges and agrees to the terms of the Cardholder Agreement.
- (4) Contractor may from time to time establish additional requirements to be met by proposed Employee Cardholders. Use of the Corporate Card or Event Card constitutes Employee Cardholder's acceptance to the terms and conditions of the Cardholder Agreement, as may be amended from time to time by Contractor.
- (5) Each Corporate Card or Event Card shall be valid for the term indicated thereon, unless the Corporate Card account, Corporate Card Program, Event Card account or Event Card Program has been canceled by Contractor pursuant to the provisions of this Contract or the Cardholder Agreement, or at the request of State, Affiliate, Participant or Employee Cardholder in accordance with the terms of this Contract and unless so canceled or terminated, Contractor will continue to issue renewal or replacement Corporate Cards and Event Cards.

D. Distribution of Cards. Corporate Cards and Event Cards shall be dispatched by the Contractor via United States Mail to the billing address specified by the State, each Affiliate or each Participant.. Contractor shall issue replacement Corporate Cards and Event Cards free of any charge to the State, Affiliate or Participant, unless State, Affiliate or Participant requests expedited delivery. The parties may agree to a means of dispatch other than U.S. Mail and responsibility for payment for costs related to such alternative means of dispatch shall be agreed in writing by Contractor and State or Affiliate prior to such dispatch.

E. Card Design. Corporate Cards and Event Cards issued shall be embossed with the expiration date of the Corporate Card or Event Card, account number, and the name of the Employee Cardholder as it appears on the Corporate Card Application described above. No title, honorific, rank, appellation, or other designation shall be used, except that Corporate Cards will include the State, Affiliate or Participant name beneath the name of the Employee Cardholder and Event Cards will include impact printing that reads: "TAX EXEMPT 98-02565" beneath the name of the Employee Cardholder unless otherwise directed by the State. The State will supply its State tax exempt number and may supply tax exempt numbers for those State agencies that have different unique tax exempt numbers. The State's main or default tax exempt number is 98-02565. The State Travel Program Manager may request to alter or amend the Card Design referenced in this Section E by written Amendment between State and Contractor and such Amendment shall include such requested alternation or modification of the Card Design, with specifications and the cost and responsibilities associated with such alteration or modification, and that a minimum of three (3) weeks is required to consider non-standard Card Design options. In addition to the process to request alterations or modifications referenced above, Contractor agrees that State may select a standard alternative "script" design, rather than the standard Card Design, which would not bear the State's seal or flag. The standard "script" Card Design features the State's seal or flag in the upper right-hand corner of the Corporate Card and Event Card. State acknowledges and agrees that any Card Design request is subject to applicable Visa regulations regarding Card Design.

F. Corporate Card, Event Card or Non-Plastic Account Cancellation. The State, Affiliate or Participant may cancel any Corporate Card or Event Card issued or any Non-Plastic Account opened for the respective entity at any time upon written notification. Cancellation of State or Participant Corporate Cards, Event Cards or Non-Plastic Accounts will be effective upon Contractor's receipt of cancellation from the State Travel Program Manager. Cancellation of Affiliate Corporate Cards, Event Cards or Non-Plastic Accounts will be effective upon Contractor's receipt of cancellation from the Affiliate Travel Program Manager. Notification may be made telephonically (with written confirmation immediately following), or in writing, or by the process provided within AccessOnline by the State Travel Program Manager or Affiliate Travel Program Manager, or by hand delivery to Contractor.

G. Individual Corporate Card and Event Card Use. Corporate Cards and Event Cards issued shall be used only by the Employee Cardholder whose name appears on the respective Corporate Card or Event Card, and only for purposes as described in Section 1 of this Contract, provided that such Corporate Card or Event Card is valid, has not been suspended or canceled by Contractor, State, Affiliate, Participant or Employee Cardholder. Corporate Cards and Event Cards issued are not transferable and shall remain the property of the Contractor. The State or the Employee Cardholder shall immediately notify Contractor of any Corporate Card or Event Card that is lost, stolen, or used without permission (or if Employee Cardholder is terminated) as provided in the terms of this Contract or the Cardholder Agreement. State and Affiliate acknowledge and agree that Employee Cardholder and State or Affiliate may be liable for any Charges (including any costs and fees) incurred after termination of the Employee Cardholder or the Corporate Card or Event Card is lost or stolen but prior to Contractor's receipt of notice of Termination of Employee Cardholder or cancellation of such Corporate Card or Event Card, as provided in Section 9 below. Corporate Cards and Event Cards must be issued to an Employee Cardholder and may not be issued by the Contractor in the name of a State department, institution, or agency without a corresponding Employee Cardholder named to the Corporate Card account or Event Card account.

H. Travel Rewards. Contractor will make available, at the request of the State, a travel rewards program, if Contractor has such a program available to its customers at the time the State requests such

a program. State's participation in such travel awards program is subject to the terms and conditions of the travel awards program agreement, as may be amended from time to time.

I. **Billing and Reports.** The Contractor will bill Employee Cardholders of Corporate Cards issued under the terms and conditions of this Contract once monthly as designated by the State. The Contractor will bill the State, Affiliate or Participant of Event Cards issued and Non-Plastic Accounts opened under the terms and conditions of this Contract once monthly as designated by the State or Affiliate. The State understands the Contractor needs flexibility on setting a billing date, but the State prefers a billing date each month in the first third or half of each month. Further, the State's fiscal year runs from July 1 through June 30 of each year. Report periods are to reflect this fiscal year with the first reporting year of this Contract is to end on June 30, 2003 or on the first billing period thereafter.

J. **Non-Plastic Accounts.** The State has established a travel management program (hereinafter, the "**Statewide Travel Management Program**") and has designated a travel program manager for such Statewide Travel Management Program (hereinafter, the "**State Travel Program Manager**"). Upon written request of the State Travel Program Manager or the Affiliate Travel Program Manager, and approval by Contractor, Contractor will establish Non-Plastic Accounts in the name and on behalf of the State and any designated Affiliate and/or Participant. Subject to approval by Contractor, the State Travel Program Manager reserves the right to delegate as many Non-Plastic Accounts for State, Affiliate(s) and/or Participant(s) as may be needed by the State. The State Travel Program manager will coordinate and will have final authority in establishing the account structure for all Non-Plastic Accounts. Non-Plastic Accounts shall be established by the Contractor only in response to the written request from the State Travel Program Manager and Contractor will use commercially reasonable efforts to establish Non-Plastic Accounts for State, Affiliate and/or Participant within five (5) business days of receipt of State Travel Program Manager's complete and properly submitted written request to Contractor. The Non-Plastic Accounts will include the State, Affiliate or Participant name, Statewide Travel Management Program coding, and hierarchy as directed by the State Travel Program Manager.

State agrees that Non-Plastic Accounts established hereunder shall be used exclusively by the State, Affiliates and Participants for Charges or purchases for the following uses:

- (1) Airfares and common carrier charges for official government business purposes;
- (2) Hotel services, including, but not limited to, lodging, meals, and meeting and conference services;
- (3) Car rentals;
- (4) Meetings, group events, catered gatherings or other meeting related services; or
- (5) Such other additional services as the State Travel Program Manager may specify, from time to time, in writing and Contractor may approve.

The State may cancel any Non-Plastic Account(s) upon Contractor's receipt of written notice from State Travel Program Manager or, for any Affiliates or Participants, its authorized designate. Contractor may, upon written notice to the State, cancel, terminate or suspend any Non-Plastic Account as provided under the terms of this Contract. All Non-Plastic Accounts, unless otherwise terminated under this Contract, shall terminate as of the final termination of this Contract.

2. **AGENCY/INSTITUTION ENROLLMENTS AND PARTICIPATION.**

A. **Affiliates.** State acknowledges and agrees that State agencies or entities may enroll in the Corporate Card Program and/or the Event Card Program and/or the Non-Plastic Accounts Program as an Affiliate, provided that such entity enrolls in such program by executing a Participating Affiliate Addendum attached hereto and incorporated as Exhibit I, credit qualifies for participation in its own capacity and maintains such program, including liability referenced in Section 5 below. The State agrees that it will provide a copy of this Contract to each enrolling Affiliate that the State wants to participate in

the Corporate Card Program and/or Event Card Program and/or Non-Plastic Accounts Program prior to the Affiliate signing a Participating Affiliate Addendum. The Participating Affiliate Addendum shall be signed by an authorized representative of the Affiliate, and shall contain the following:

- (1) Agreement by the Affiliate to pay all Charges and fees and account balances for all and any of its Corporate Card accounts and/or Event Card accounts, as provided in Sections 5, 6, and 9, and any Non-Plastic Accounts by the Due Date as indicated on the Statement and administer Corporate Card accounts and/or Event Card accounts and/or Non-Plastic Accounts as described in this Contract.
- (2) To accept and perform all duties, responsibilities and obligations required of it by this Contract and the Participating Affiliate Addendum, including, but not limited to, the providing of annual financial statements to Contractor for review; and
- (3) If so delegated by State Travel Program Manager, designate a principal representative for the Affiliate (an **"Affiliate Travel Program Manager"**).

If a Non-Plastic Account is requested by State Travel Program Manager or its designate, Affiliate Travel Program Manager, a copy of the applicable Participating Affiliate Addendum will be furnished to the State Travel Program Manager. The State will not be liable for the financial obligations incurred by any Affiliate.

B. Participants. This Contract shall also apply to cash advances and purchases of goods and services by agencies of the State as State may designate to Contractor in writing while this Contract is in effect, and such agencies are approved by Contractor, as participants (known hereafter as **"Participant"** and **"Participants"**) in the program(s) described in this Contract. State acknowledges and agrees that enrollment of Participants by the State is subject to State's credit qualification and State maintains the Corporate Card Program and/or the Event Card Program and/or the Non-Plastic Accounts Program for the Participant, including liability referenced in Section 5 below. Participants do not have financial statements of their own for review and will not sign a Participating Affiliate Addendum. State shall furnish a list to Contractor designating such Participant(s) on the Participation Addendum attached hereto as Exhibit J. State shall have the right to exclude any Participant upon written notice to Contractor.

3. TERM OF THIS CONTRACT. This Contract shall become effective upon State Controller approval or May 1, 2003 and shall remain in full force and effect for an initial term of three (3) years from the Effective Date. The State may elect to continue this Contract for up to five (5) additional one (1) year terms under the existing terms and conditions of this Contract by executing a written option exercise letter, substantially in the form of the letter attached hereto as Exhibit D, prior to the end of the then current term.

4. PRICING.

A. Annual Fee. The State, Affiliate, Participant and/or Employee Cardholder shall pay to the Contractor the annual fees, if any, as set forth on the Exhibit C, attached hereto and made a part hereof. Such annual fee is payable once per year in advance for each Corporate Card, each Event Card and each Non-Plastic Account, upon billing by Contractor, and is not refundable with respect to any Corporate Card, Event Card or Non-Plastic Account terminated during the year for which the annual fee has been paid unless Contractor shall otherwise agree.

B. Other Fees. The State, Affiliate, Participant and/or Employee Cardholder shall pay to the Contractor all fees accrued in connection with the use of any Corporate Card, Event Card, Non-Plastic Account, account or related service provided under this Contract as referenced in Exhibit C.

5. LIABILITY FOR CHARGES; BILLING PROCEDURES.

A. Corporate Cards. The Employee Cardholder shall be liable for all Charges made to his or her Corporate Card as provided in the Cardholder Agreement. The State or Affiliate shall have contingent

liability for payment of Legitimate Business Charges, but excluding Personal Charges, Fraudulent Charges and Legitimate Business Charges previously reimbursed by State or Affiliate to the Employee Cardholder.

Charges shall be set forth on a periodic billing statement (the **"Cardholder Statement"**) furnished to the Employee Cardholder in accordance with the Cardholder Agreement. Employee Cardholders shall pay Contractor immediately upon receipt of the Cardholder Statement. A sample of the Contractor's itemized billing statement is attached as Exhibit E. Contractor shall, upon request, provide State with information on a periodic basis with respect to all Charges made by Employee Cardholders to the respective Corporate Cards during each billing cycle, a **"Summary Statement"**. The State or Affiliate shall have the same right with respect to billing inquiries as the Employee Cardholders under the Cardholder Agreement.

B. Non-Plastic Accounts. State and Affiliate shall be solely liable for all Charges, purchases, fees and other charges made or incurred pursuant to all Non-Plastic Accounts.

All Charges pursuant to a Non-Plastic Account shall be centrally billed to the State or Affiliate. Contractor shall send to the State and each Affiliate a periodic billing statement (the **"Statement"**) listing all Charges to a Non-Plastic Account. The amount shown on the Statement as **"Payment Due Upon Receipt"**, will be due and payable by State or Affiliate to Contractor upon receipt of the Statement in United States Dollars at the address designated by Contractor. A fifteen U.S. Dollar (\$15.00) fee will be charged to the State or Affiliate for each non-sufficient funds check. If checks drawn on banks located outside of the United States are subject to collection fees, State or Affiliate shall reimburse Contractor for such fees.

C. Event Cards. State and Affiliate shall be solely liable for all Charges, purchases, fees and other charges made or incurred pursuant to all Event Cards.

All Charges pursuant to an Event Card shall be centrally billed to the State or Affiliate. Contractor shall send to the State and each Affiliate a periodic billing statement (the **"Statement"**) listing all Charges to an Event Card. The amount shown on the Statement as **"Payment Due Upon Receipt"**, will be due and payable by State or Affiliate to Contractor upon receipt of the Statement in United States Dollars at the address designated by Contractor. A fifteen U.S. Dollar (\$15.00) fee will be charged to the State or Affiliate for each non-sufficient funds check. If checks drawn on banks located outside of the United States are subject to collection fees, State or Affiliate shall reimburse Contractor for such fees.

D. MCC Disclaimer. Based upon Standard Industry Classifications (**"SIC"**) or Visa's Merchant Category Codes (**"MCC"**) and as agreed to by State or Affiliate and Contractor, charge authorization procedures shall be established in order to cause certain transactions to be refused or denied. SIC or MCC authorizations may be changed from time to time by Contractor upon notice to State. SIC or MCC authorizations may be changed from time to time by the State or Affiliate as agreed to by the Contractor. Contractor shall have no liability or responsibility with respect to the verification or correction of SICs or MCCs selected by State or implemented with respect to any provider of goods and/or services.

6. DELINQUENCY.

A. Corporate Cards. An Employee Cardholder will be deemed delinquent unless Contractor receives the amount shown on the Cardholder Statement as **"Amount Due"** before the next Statement Date. Any unpaid portion of the Amount Due will be shown on subsequent Cardholder Statements as the **"Past Due Amount"**. The Corporate Card will be suspended if any part of the Past Due Amount is unpaid for two (2) Statement Dates. Late Fee(s), Delinquency Fee(s) and any other applicable fees will be assessed to Employee Cardholder in addition to the Past Due Amount as outlined in Exhibit C. Court costs plus reasonable attorney fees (as allowed by law) may be added to any delinquent balance referred to an attorney for collection.

In addition to Contractor's other collection procedures, Contractor, if it deems necessary or upon request of State or Affiliate, will provide a report to State or Affiliate listing any Charges by Employee Cardholders which remain unpaid. Immediately upon receipt of such report, State and Affiliate shall give notice to such

Employee Cardholder of the cancellation rights of Contractor under the terms of the Cardholder Agreement. If any Charges to the account of an Employee Cardholder are not paid by such Employee Cardholder within sixty one (61) days of the first billing therefor, State or Affiliate shall pay any applicable Charges for which it is liable, as provided under the terms of this Contract, to Contractor upon receipt of Contractor's written demand to State for payment. Interest shall accrue to the State or Affiliate on the sixty first (61st) day at the rate prescribed by State statute of one percent (1%) per month.

B. Non-Plastic Accounts. State or Affiliate will be deemed delinquent unless Contractor receives the amount shown on the Statement as Payment Due Upon Receipt, before the next Statement Date (approximately twenty five (25) days). Any unpaid portion of the Payment Due Upon Receipt will be shown on subsequent Statements as the **"Past Due Amount"**. The Non-Plastic Account will be suspended if any part of the Past Due Amount is unpaid for two (2) billing dates. In the event of State's or Affiliate's delinquency, Contractor may elect to terminate this Contract or the respective Participating Affiliate Addendum immediately upon notice to State or Affiliate, if applicable. Whether or not Contractor has elected to terminate this Contract or the respective Participating Affiliate Addendum, Late Fee(s), Delinquency Fee(s) and any other applicable fees will be assessed to the State or Affiliate in addition to the Past Due Amount as outlined in Exhibit C. Court costs plus reasonable attorney fees (as allowed by law) may be added to any delinquent balance referred to an attorney for collection. Interest shall accrue to the State or Affiliate on the sixty first (61st) day at the rate prescribed by State statute of one percent (1%) per month.

C. Event Cards. State or Affiliate will be deemed delinquent unless Contractor receives the amount shown on the Statement as Payment Due Upon Receipt, before the next Statement Date (approximately thirty (30) days). Any unpaid portion of the Payment Due Upon Receipt will be shown on subsequent Statements as a **"Past Due Amount"**. The Event Card will be suspended if any part of the Past Due Amount is unpaid for two (2) billing dates. In the event of State's or Affiliate's delinquency, Contractor may elect to terminate this Contract or the respective Participating Affiliate Addendum immediately upon notice to State or Affiliate, if applicable. Whether or not Contractor has elected to terminate this Contract or the respective Participating Affiliate Addendum, Late Fee(s), Delinquency Fee(s) and any other applicable fees will be assessed to the State or Affiliate in addition to the Past Due Amount as outlined on Exhibit C. Court costs plus reasonable attorney fees (as allowed by law) may be added to any delinquent balance referred to any attorney for collection. Interest shall accrue to the State or Affiliate on the sixty first (61st) day at the rate prescribed by State statute of one percent (1%) per month.

7. DISPUTED CHARGES.

A. Corporate Cards. Disputes regarding Corporate Card Charges must be communicated in writing to: U.S. Bank, P.O. Box 6344, Fargo, North Dakota 58125-6344. The communication should include the name and account number, the dollar amount of the suspect Charge, the reference number, and a description of the error. Any communication regarding a suspect Charge must be received by Contractor within sixty (60) days of the date on the Cardholder Statement on which the suspect Charge first appeared. Reasons to dispute a Charge may be categorized as, but not necessarily limited to, failure to receive goods or services charged, fraud, forgery, altered Charges and Charges incurred by telephone order where the authenticity of the Charge is in question.

B. Non-Plastic Accounts. State and Affiliate acknowledge that all Charges associated with a Non-Plastic Account shall be deemed to be for the benefit of the State and Affiliate. Disputes concerning a Charge shall first be communicated by the State or Affiliate directly to the appropriate provider of goods and services and the parties shall attempt to resolve the dispute. Contractor is not responsible for the refusal of a provider of goods and services to permit a Charge to be charged to a Non-Plastic Account.

C. Event Card. Disputes regarding Event Card Charges must be communicated in writing to: U.S. Bank, P.O. Box 6344, Fargo, North Dakota 58125-6344. The communication should include the name and account number, the dollar amount of the suspect Charge, the reference number, and a description of the error. Any communication regarding a suspect Charge must be received by Contractor within sixty (60) days of the date on the Statement on which the suspect Charge first appeared. Reasons to dispute a Charge may be categorized as, but not necessarily limited to, failure to receive goods or services charged, fraud, forgery, altered Charges and Charges incurred by telephone order where the authenticity of the Charge is in question.

8. **DISPUTED BILLINGS.** Disputes regarding a Cardholder Statement or an Event Card or Non-Plastic Account Statement shall be communicated in writing to: U.S. Bank, P.O. Box 6344, Fargo, North Dakota 58125-6344. For purposes of clarity, this Section 8 refers only to suspected errors by Contractor related to statements, not related to the transactions themselves. Communications should include the name and account number, the dollar amount of the suspected error and a description of the suspected error. Any communication regarding a suspected error must be received by Contractor within sixty (60) days of the date on the Cardholder Statement or an Event Card or Non-Plastic Account Statement on which the suspected error first appeared.

9. **LOST OR STOLEN CORPORATE CARDS OR EVENT CARDS OR COMPROMISED NON-PLASTIC ACCOUNTS.** Lost or stolen Corporate Cards or Event Cards or compromised Non-Plastic Account numbers must be reported to Contractor immediately by telephone with prompt written confirmation ("proper notification"). Neither the Employee Cardholder nor the State nor an Affiliate will be held liable for any Charge, purchase, card fees, cash advance or other charge incurred or arising by virtue of the use of a Corporate Card, Event Card or Non-Plastic Account following proper notification to the Contractor of the loss or theft of such Corporate Card, Event Card or Compromised Non-Plastic Account number.

10. **TAX EXEMPT STATUS.** It is hereby recognized and acknowledged by the Contractor that the State is tax-exempt and is not liable for any sales, use, excise, property or other taxes imposed by any federal, state or local government tax authority except as provided for under federal law when such taxes or fees apply to airfares and such tax exemption applies only as provided for by the Colorado Department of Revenue as outlined in its FYI Sales 63 and as amended. The State's FEIN is 84-730123K. The State tax exemption number is 98-02565. If Affiliates or Participants routinely use different tax exemption numbers, such numbers may be used on Event Cards issued to its Affiliate(s) or Participant(s). The State is also not liable for any taxes of the Contractor for franchise or related to the income of the Contractor. No taxes of any kind shall be charged to the State except as noted above.

11. **STATE REPRESENTATIVE; LIABILITY FOR TERMINATED EMPLOYEES.** The State Travel Program Manager and each Affiliate Travel Program Manager shall undertake the following duties on behalf of State (including its Participants) and each Affiliate, respectively, as well as any other reasonable duties requested by Contractor and agreed to by State:

A. The State Travel Program Manager and each Affiliate Travel Program Manager shall be familiar with all aspects of the Corporate Card Program, the Event Card Program and the Non-Plastic Account Program, including but not limited to, billing procedures, number and status of Corporate Cards and/or Event Cards and/or Non-Plastic Accounts, status of Employee Cardholders and authorized users of Non-Plastic Account(s), notice requirements, and status of Delinquent Corporate Card accounts and/or Event Card accounts and/or Non-Plastic Accounts of Employee Cardholders, State, Affiliates and Participants;

B. The State Travel Program Manager and each Affiliate Travel Program Manager shall provide the delinquency notice to Employee Cardholders for Corporate Cards as required under Section 6.A, hereof;

C. If Contractor elects to pursue collection efforts against an Employee Cardholder, the State Travel Program Manager or the Affiliate Travel Program Manager shall assist Contractor in its collection efforts; but pursuit by Contractor of collection efforts against an Employee Cardholder shall not relieve State or Affiliate of its liability for payment to Contractor of Charges for which it is liable as defined in Section 6.A. As allowed by law, the State agrees to provide any information regarding the employment status and residence of the Employee Cardholder and to cooperate in securing the payment by the Employee Cardholder of the owed amount to Contractor, including, at the option of the State or Affiliate, taking personnel action against the delinquent Employee Cardholder;

D. The State Travel Program Manager or the Affiliate Travel Program Manager shall advise Contractor of their respective Employee Cardholder's termination of employment with State (or a Participant of State) as such termination is processed by State in accordance with State's (including any Affiliate's) standard personnel termination procedures. The State and each Affiliate shall take all reasonable actions necessary to collect Corporate Cards issued to Employee Cardholder whose employment has

been terminated or whose Corporate Card accounts have been canceled. The State shall insure the destruction of such Corporate Cards. Notwithstanding any provision to the contrary, failure of the State Travel Program Manager or the Affiliate Travel Program Manager to give prompt notice to Contractor of their respective Employee Cardholder's termination date shall result in State's or Affiliate's liability to pay all Charges and any applicable fees associated with the respective Employee Cardholder's Corporate Card account made between the date of termination of employment and the date such notice is received by Contractor. All such Charges and any applicable fees shall be paid to Contractor within forty-five (45) days of State's or Affiliate's receipt of the Statement therefor. The State or Affiliate shall advise all personnel administrators managing personnel databases separate from that operated by the State Department of Personnel that they must advise Contractor of any Employee Cardholder's termination of employment as such termination is processed in accordance with State's (including any Affiliate's) standard personnel termination procedures.

12. INSURANCE. Contractor shall provide, for the use and benefit of State employees and any State guest, contractor, student, job applicant or consultant traveling at the direction of the State on official business, the following insurance at no cost to the State or to State Employee Cardholders. Insurance coverage programs provided herein are subject to change from time to time. In such event, Contractor shall immediately notify the State, in writing, of the change in, or non-availability of, any insurance coverage herein described. Contractor shall furnish State with copies of policies or certificates of insurance for the described coverage not later than thirty (30) days after the effective date of any new or additional insurance coverage acquired by Contractor during the term of this Contract. It is understood that changes in, or non-availability of, coverages described may result in termination of this Contract by the State.

A. Travel Accident Insurance. Common Carrier Travel Accident Insurance, with the maximum principal sum of not less than five hundred thousand U.S. Dollars (\$500,000.00) against accidental death or dismemberment shall be furnished by the Contractor. Travel Accident Insurance shall be furnished for all common carrier charges irrespective of whether the charge was made to a Corporate Card account or a Non-Plastic Account. Coverage shall be described in Exhibit G, attached hereto .

Each Employee Cardholder will receive the specific information regarding the Travel Accident Insurance at the time they receive their Corporate Card. If the Travel Accident Insurance is changed in any way, each Employee Cardholder will receive updated information.

B. Other Insurance. Various insurance is/are offered by Visa, such as the Visa Liability Waiver Insurance. Such insurance can be changed by Visa at any time without notice to nor consent from State. The current Visa Commercial Benefits Package brochure describes such insurance Programs currently available and is attached hereto as Exhibit H.

C. Additional Insurance. Nothing in this Contract shall be construed so as to preclude the offering of additional insurance coverage to State. The State shall not be liable for the cost of any additional coverage furnished by the Contractor or Contractor's insurer, unless otherwise agreed in writing by the parties.

13. INSURANCE FOR CONTRACTOR. During the term of this Contract, and any extension(s) hereof, the Contractor agrees that it will keep in force an insurance policy or policies, issued by a company authorized to do business in Colorado, in the kinds and minimum amounts specified below unless specifically waived herein. In the event of cancellation of any such coverage, the Contractor shall immediately notify the State of such cancellation.

A. Standard Worker's Compensation and Employers' Liability as required by State statute, including occupational disease; covering all employees on or off the work site, acting within the course and scope of their employment.

B. General, Personal Injury, Professional, Automobile Liability (including bodily injury, personal injury and property damage) with minimum coverage of:

(1) Occurrence basis policy: Combined single limit of six hundred thousand U.S. Dollars (\$600,000.00) or Claims-Made policy: combined single limit of six hundred thousand U.S. Dollars (\$600,000.00); plus an endorsement, certificate, or other evidence that extends coverage two (2) years beyond the performance period of the contract.

(2) Annual Aggregate Limit policy: Not less than one million U.S. Dollars (\$1,000,000.00) plus agreement that the Contractor will purchase additional insurance to replenish the limit to one million U.S. Dollars (\$1,000,000.00) if claims reduce the annual aggregate below six hundred thousand U.S. Dollars (\$600,000.00).

C. The State of Colorado shall be named as an additional insured on all liability policies.

D. The insurance shall include provisions preventing cancellation without thirty (30) calendar days prior written notice to the State by certified mail.

E. Upon execution of this Contract, the Contractor shall provide to the State additional insured endorsements and certificates of the required insurance coverage.

The Contractor shall provide such other insurance as may be required by law, or in a specific solicitation.

14. CASH ADVANCE, ATM PROGRAM, TRAVELER'S CHECKS. Contractor shall allow Employee Cardholders the use of the Corporate Card to obtain cash advances from Automated Teller Machines (ATMs) or Visa member banks. Employee Cardholders may obtain cash by activating an ATM with a Corporate Card or presenting the Corporate Card at Visa member banks. The funds drawn shall be those of the Contractor. The cash advance program shall pertain only to Corporate Cards.

A. **Issuance.** The State, each Participant and each Affiliate may determine whether Personal Identification Numbers (PIN) will be automatically issued upon the Travel Program providing Employee Cardholder information as required by Contractor for passive enrollment as prescribed by the Automated Card Issuance program or issued through standard enrollment. If paper enrollment is selected, each applicant shall complete a Corporate Card Application, and forward it to the State's authorized representative (the "**State Agency Coordinator**") for signature, or in the case of an Affiliate, to the Affiliate's authorized representative (the "**Affiliate Agency Coordinator**"). Contractor will then create the PIN and mail the number to the Employee Cardholder within seven (7) days of receipt of the Corporate Card Application. The Corporate Card Application form is attached as Exhibit F.

B. **Limits.** Standard withdrawal limits for authorized users shall be five hundred U.S. Dollars (\$500.00) per day, and not more than five hundred U.S. Dollars (\$500.00) in any seven (7) consecutive day period, with a minimum limit of one hundred U.S. Dollars (\$100.00) per transaction. The State may establish withdrawal limits both below and above the pre-established limits subject to Contractor approval. Different limits may be established by the State or an Affiliate, or on a case-by-case basis for individual Employee Cardholders upon Contractor's receipt of written request from the State or Affiliate and Contractor's approval.

C. **Fees.** The Employee Cardholder shall pay two percent (2%) per transaction for cash access (ATM) transactions with a minimum fee of two U.S. Dollars (\$2.00) (the "**Cash Advance Fee**").

D. **Traveler's Checks.** Contractor does not offer Traveler's Checks in conjunction with the Corporate Card Program. Employee Cardholders can use the Corporate Card to purchase the travelers checks of their choice.

15. TRAINING. The Contractor will provide the necessary training and program expansion materials as required by the State. The Contractor Relationship Manager is responsible for conducting the proper training program for the State. The Contractor will provide training materials to State, Participants, Affiliates and Employee Cardholders, offer national and regional conferences, and provide an interactive Web site, AccessOnline, for all users. The Contractor agrees to coordinate with the State's authorized travel coordinator (the "**State Travel Coordinator**") or, if applicable, the Affiliate's authorized travel coordinator

(the “**Affiliate Travel Coordinator**”) in developing and hosting State user meetings aimed at resolving issues with current users and educating prospective new users about the Corporate Card Program and Non-Plastic Account Program, description of related services, administration requirements, and software tools for administration and reconciliation. Except as otherwise proposed and accepted by the State and/or Affiliate, outreach and training sessions will not exceed eight (8) hours in duration every sixty (60) days. Contractor, State, Affiliate and Participant are each responsible for its respective costs, including, but not limited to, travel and lodging expenses of its personnel related to any on-site training programs.

16. REVENUE SHARING. The Contractor will provide revenue sharing opportunities to the State of Colorado, Department of Personnel and Administration, Division of Central Services annually. Revenue Sharing payment(s) are paid upon annual volume and speed of payment, as described in the Contractor’s proposal, Exhibit B and the Performance Volume Rebate Addendum, Exhibit K. Annually, the Contractor will make payment by electronic funds transfer (EFT) to the State of Colorado Treasurer, if any Revenue Share has been earned. Unless otherwise proposed and agreed, Revenue Sharing payments will be made annually, due within eight (8) months after close of the annual period. State acknowledges and agrees that any revenue sharing opportunities are governed by the terms and conditions of the Performance Volume Rebate Addendum attached hereto and incorporated in this Contract as Exhibit K.

17. INCENTIVE PAYMENT. The Contractor will pay to the State of Colorado, Department of Personnel and Administration, Division of Central Services nine thousand U.S. Dollars (\$9,000.00) as an Incentive Payment. The Incentive Payment will be paid in three (3) installments of three thousand U.S. Dollars (\$3,000.00) each. The first installment is due within sixty (60) days after the Effective Date of this Contract. The remaining two (2) installments will be paid within sixty (60) days after the end of the first and second Contract Years, respectively, provided that this Contract has not been terminated for any reason by the parties as provided under the terms of Section 20 of this Contract. A “**Contract Year**” is a twelve (12) month period of time with the first Contract Year starting on the first day of the first month following the Effective Date of this Contract. The nine thousand U.S. Dollar (\$9,000.00) Incentive Payment is based upon the State reaching twenty nine million U.S. Dollars (\$29,000,000.00) in Net Annual Charge Volume in the first Contract Year and growth to forty six million U.S. Dollars (\$46,000,000.00) in Net Annual Charge Volume by the end of the fifth (5th) Contract Year.

18. CUSTOMER SERVICE.

A. **Customer Service Center.** Contractor shall operate a toll-free, 24 hour, 7 days per week, 365 days per year Customer Service Center. Employee Cardholders will receive assistance on matters such as billing, credit line, lost or stolen card procedures, declined transactions, charge backs, etc.

B. **Visa Assistance Center.** Employee Cardholders will have access to travel or emergency assistance by calling the Visa Assistance Center, a worldwide, 24 hour, 7 days per week, 365 days per year service.

19. MANAGEMENT INFORMATION REPORTS. Contractor will furnish those management information reports as described and in the time frame detailed in Exhibit A. The standard reports are described in Exhibit B and are offered electronically and through AccessOnline. Contractor shall furnish ad hoc reports in response to the State’s written notice to the Contractor. These ad hoc reports will be produced within three to ten (3-10) business days from the request at no additional cost to the State. The State’s notice shall specify reporting frequency, period of the report, medium in which report will be furnished, and the number of counterparts to be furnished and any additional appropriate information.

Additional management information reports, which are available from Contractor, may be requested from time to time by the State. Management information is the essence of this Contract and Contractor will promptly and fully cooperate with State’s requests for management information. The Contractor shall have the assistance of the State’s Travel Program Manager.

20. TERMINATION.

A. **Termination Without Cause.** This Contract may be terminated without compensation for termination costs at any time upon ninety (90) days prior written notice to the other party. All Corporate Cards, Non-Plastic Accounts and any related accounts shall be deemed canceled effective upon termination of this Contract.

B. Termination for Cause.

(1) Breach of this Contract, 30 Day Notice and Right to Cure. Either party may terminate this Contract without compensation for termination costs due to breach of a material term of this Contract, provided that the terminating party notifies the other party in writing at least thirty (30) days prior to the termination date, stating the reasons for termination, procedures to correct the breach, if any, and the date this Contract will be terminated without further notice unless the breach or violation of this Contract is cured or corrected to the reasonable satisfaction of the terminating party by the termination date.

(2) Right to Immediate Termination of this Contract. Notwithstanding the foregoing, either party shall have the right to immediately terminate this Contract, by written notice of termination to the other party, upon any one (1) or more of the following events:

(a) Liquidation. Dissolution or liquidation of the other party;

(b) Bankruptcy. Insolvency of the other party or the voluntary institution by the other party of any proceeding under any statute or any governmental authority for the relief of debtors seeking the relief or readjustment of indebtedness, either through reorganization, composition, extension or otherwise, or the involuntary institution against such party of any such proceeding which is not vacated within ten (10) days from such appointment, or any levy under attachment, execution or similar process which is not vacated or removed within ten (10) days by payment or bonding;

(c) Assignment. Any sale, assignment, or transfer of this Contract by the other party, without the terminating party's prior written consent, except as otherwise permitted hereunder; or

(d) Misrepresentation. If any material statement, representation or warranty made herein or at any time furnished is untrue in any material respect when made.

C. Neither party shall be considered in default by reason of any failure in performance of this Contract in accordance with its terms if such failure arises out of acts of God; acts of the public enemy; acts of the State and any governmental entity in its sovereign or contractual capacity; fires; floods; epidemics; quarantine restrictions; strikes or other labor disputes; freight embargoes; or unusually severe weather.; Notwithstanding the foregoing, such failure to perform such duties or obligations under this Contract shall be considered to be a breach hereof if such failure continues for a period exceeding sixty (60) days, in which event the failure shall constitute a breach and the non-breaching party may terminate this Contract.

D. Nothing contained in this Section 20 shall affect or impair any right, obligations, or liabilities arising prior to or at the time of the termination of this Contract or that may arise by an event causing the termination of this Contract, or that are expressly stated herein to survive such termination. All Charges incurred during the term of the Contract shall remain subject to all terms of this Contract despite the termination of this Contract.

21. **ASSIGNMENT.** Neither party to this Contract may sell, assign, or transfer this Contract or any part of this Contract without the prior written consent of the other party; provided, however, that the Contractor may assign any or all of its rights and obligations under this Contract to any parent, subsidiary or affiliate, or any successor in interest of Contractor without the prior written consent of the State.

22. **NOTICES.** All notices required to be given by the parties shall be given to the individuals at the addresses listed below. Notices shall be effective when actually received by the party to which addressed, or not later than three (3) days after the notice has been deposited in the United States mail, postage prepaid. Either party may from time to time designate in writing substitute addresses or persons to whom notices shall be sent.

If to or from the Contractor: U.S. Bank National Association ND
C/O U.S. Bancorp Card Services, Inc.
Mail Code EP-MN-TT2C
1010 South Seventh Street
Minneapolis, MN 55415
Attn: CPS Contract Services

If to or from the State: Norman Wilson
Statewide Travel Management Program
Colorado Division of Central Services
225 E. 16th Ave, Suite 800
Denver, CO 80203

If to an Employee Cardholder: Cardholder' address as reflected in Contractor' files.

23. **MISCELLANEOUS.**

A. **No Relationship.** Nothing contained in this Contract shall be construed to create any association for brokerage, agency, joint venture, partnership, or employment relationship between the Contractor and the State.

B. **No Implied Waivers.** The right of any party under any provision of this Contract shall not be affected by its prior failure to require the performance by the other party under such provision or any other provision of this Contract, nor shall waiver by any party of a breach of any provision hereof constitute a waiver of the provision itself. No waiver of any right hereunder shall be deemed waived unless such waiver is in writing and signed by the other party making such waiver.

C. **Remedies.** In the event that either party breaches or violates any of the obligations contained in this Contract, the other party shall be entitled to exercise any right or remedy available to it either at law or in equity, including without limitation termination of this Contract, damages and injunctive relief. The exercise of any right or remedy shall not preclude the concurrent or subsequent exercise of any other right or remedy, and all rights and remedies shall be cumulative.

D. **Complete Agreement; Amendments.** This Contract, including the attached exhibits that are incorporated by reference, is intended as the complete integration of all understanding between the parties hereto. No prior or contemporaneous written or oral, addition, deletion, or other amendment shall have any force or affect whatsoever, unless embodied herein in writing. No subsequent novation, renewal, addition, deletion, or other amendment shall have any force or effect unless embodied in a written contract executed by both parties and approved pursuant to the Fiscal Rules of the State of Colorado.

E. **Successors and Assigns.** All terms and provisions of this Contract shall inure to the benefit of and be binding upon the parties hereto and their respective successors and permitted assigns.

F. **Venue; Jurisdiction.** The parties agree that Denver Federal District Court shall be the venue for any dispute between the parties arising under this Contract, or for any dispute between Contractor and Employee Cardholders, and Contractor consents to personal jurisdiction in Denver Federal District Court, Colorado.

G. **Severability.** The invalidity or unenforceability of any one (1) or more portions, sentence, clauses, or paragraphs in this Contract shall not effect the validity or enforceability of the remaining portions of this Contract or any part of this Contract.

H. **Gender; Number.** Unless the context of this Contract otherwise requires, the masculine, feminine, or neuter gender each shall include the other genders, and the singular shall include the plural.

I. **Captions.** The paragraph headings contained in this Contract are for convenience of reference only and shall not limit or define the text.

J. **Counterparts.** This Contract may be executed in separate counterparts, each of which shall constitute an original but all of which shall constitute one and the same Contract.

K. **Local Governments.** Contractor acknowledges that under the provisions of Section 24-110-201, C.R.S., this Contract is available, upon the same terms and conditions as set forth, to political subdivisions of the State. This Contract shall not be construed to create any agency, express or implied, between the State and any political subdivisions.

L. **Audit.** The State may, at reasonable times and places upon prior written notice, audit the books and records of the Contractor to the extent that such books and records relate to the execution of this Contract, for the term of this Contract and for an additional period of three (3) years after the termination date of this Contract. Such audits shall be conducted at the sole expense of the State. Contractor authorizes State to perform such audits and to make inspections for the purpose of evaluating performance of the terms and conditions of this Contract.

24. **BENEFICIARY.** Except as herein specifically provided otherwise, this Contract shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns. It is expressly understood and agreed that the enforcement of the terms and conditions of this Contract and all rights of action relating to such enforcement, shall be strictly reserved to the State and the named Contractor. Nothing contained in this Contract shall give or allow any claim or right of action whatsoever by any other third person. It is the express intention of the State and the Contractor that any such person or entity, other than the State or the Contractor, receiving services or benefits under this Contract shall be deemed an incidental beneficiary only.

25. **CONTRACT DISPUTES.** Except as herein specifically provided otherwise, disputes concerning the performance of this Contract, excluding disputes relating to alleged breach or enforcement of Sections 1, 4, 5, 6, 7, 8, 9, 11, 14, 16, 17, 20, 27 and 28 of this Contract, which cannot be resolved by the designated representatives shall be referred in writing to a senior departmental management staff designated by the department and a senior manager designated by the Contractor. Failing resolution at that level, disputes shall be presented in writing to the Executive Director and the Contractor's chief executive officer for resolution. This process is not intended to supersede any other process for the resolution of controversies provided by law.

26. **CONTINUITY OF SERVICE.** Contractor recognizes that the services provided under this Contract are important to State's overall business and upon the expiration or termination of this Contract, a successor services provider may continue these services for State. Contractor shall, consistent with the Corporate Card Program capabilities and the terms of this Contract, assist with an orderly and efficient transition to such successor services provider.

27. **FINANCIAL INFORMATION.** The State shall deliver to the Contractor as soon as available, and in any event not later than ninety one (91) days after the end of each fiscal year of State, State's audited financial statements prepared by independent certified public accountants selected by State or Form 10-K as provided to the U.S. Securities and Exchange Commission. The State further agrees to provide to the Contractor, from time to time, such other information regarding the business, operations, affairs and financial condition of the State as the Contractor may reasonable request. The State authorizes the Contractor to obtain, from time to time, from any other source, including an affiliate of U.S. Bancorp, any credit or financial information on the State held by such source. In the event that the State has provided the foregoing financial information

pursuant to another relationship between the State and the Contractor, or between the State and any affiliate of U.S. Bancorp, and if such financial information is available to the Contractor, State will be deemed to have complied with the requirements of this Section 27. The State shall make available and the Contractor shall utilize the State's Comprehensive Annual Financial Report (CAFR). The Contractor shall inform the State and Affiliates if the CAFR satisfies the Section 27 requirement.

28. **CREDIT LIMIT.** Based on financial information provided to Contractor pursuant to Section 27 of this Contract, together with such other information as Contractor may deem relevant, Contractor, in its sole discretion, shall establish a "**Credit Limit**" which shall be the maximum aggregate amount resulting from Charges, including, but not limited to purchases, cash advances, fees and other charges, incurred or arising by virtue of the use of all Corporate Cards or Non-Plastic Accounts for State and each Affiliate. From time to time and in its sole discretion, Contractor may review the amount of, and may adjust, such Credit Limit. Contractor shall advise the State of any decrease in the Credit Limit; provided, however, that the Credit Limit shall not be decreased to an amount lower than the current amount due from the State unless the State has been given notice. Such notice shall be made at least ten (10) business days prior to the effective date of the decrease in the Credit Limit, during which time the State shall have the opportunity to make a payment to Contractor to prevent the State from becoming over limit.

29. **SPECIAL PROVISIONS.** (Not for Use with Inter-Governmental Contracts)

A. **Controller's Approval CRS 24-30-202 (1).** This Contract shall not be deemed valid until it has been approved by the Controller of the State of Colorado or such assistant as he may designate.

B. **Fund Availability CRS 24-30-202 (5.5).** Financial obligations of the State of Colorado payable after the current fiscal year are contingent upon funds for that purpose being appropriated, budgeted, and otherwise made available. The State agrees to notify Contractor immediately after it is determined that such funds are not going to be appropriated, budgeted or otherwise made available.

C. **Independent Contractor 4 CCR 801-2.** THE CONTRACTOR SHALL PERFORM ITS DUTIES HEREUNDER AS AN INDEPENDENT CONTRACTOR AND NOT AS AN EMPLOYEE. NEITHER THE CONTRACTOR NOR ANY AGENT OR EMPLOYEE OF THE CONTRACTOR SHALL BE OR SHALL BE DEEMED TO BE AN AGENT OR EMPLOYEE OF THE STATE. CONTRACTOR SHALL PAY WHEN DUE ALL REQUIRED EMPLOYMENT TAXES AND INCOME TAX AND LOCAL HEAD TAX ON ANY MONIES PAID BY THE STATE PURSUANT TO THIS CONTRACT. CONTRACTOR ACKNOWLEDGES THAT THE CONTRACTOR AND ITS EMPLOYEES ARE NOT ENTITLED TO UNEMPLOYMENT INSURANCE BENEFITS UNLESS THE CONTRACTOR OR THIRD PARTY PROVIDES SUCH COVERAGE AND THAT THE STATE DOES NOT PAY FOR OR OTHERWISE PROVIDE SUCH COVERAGE. CONTRACTOR SHALL HAVE NO AUTHORIZATION, EXPRESS OR IMPLIED, TO BIND THE STATE TO ANY AGREEMENTS, LIABILITY, OR UNDERSTANDING EXCEPT AS EXPRESSLY SET FORTH HEREIN. CONTRACTOR SHALL PROVIDE AND KEEP IN FORCE WORKERS' COMPENSATION (AND PROVIDE PROOF OF SUCH INSURANCE WHEN REQUESTED BY THE STATE) AND UNEMPLOYMENT COMPENSATION INSURANCE IN THE AMOUNTS REQUIRED BY LAW, AND SHALL BE SOLELY RESPONSIBLE FOR THE ACTS OF THE CONTRACTOR, ITS EMPLOYEES AND AGENTS.

D. **NON-DISCRIMINATION.** The Contractor agrees to comply with the letter and the spirit of all applicable state and federal laws respecting discrimination and unfair employment practices.

E. **CHOICE OF LAW.** The laws of the State of Colorado and rules and regulations issued pursuant thereto shall be applied in the interpretation, execution, and enforcement of this Contract. Any provision of this Contract, whether or not incorporated herein by reference, which provides for arbitration by any extra-judicial body or person or which is otherwise in conflict with said laws, rules, and regulations shall be considered null and void. Nothing contained in any provision incorporated herein by reference which purports to negate this or any other special provision in whole or in part shall be valid or enforceable or available in any action at law whether by way of complaint, defense, or otherwise. Any provision rendered null and void by the operation of this provision will not invalidate the remainder of this Contract to the extent that this Contract is capable of execution.

At all times during the performance of this Contract, the Contractor shall strictly adhere to all applicable federal and state laws, rules, and regulations that have been or may hereafter be established.

F. **Vendor Offset CRS 24-30-202 (1) & CRS 24-30-202.4.** Pursuant to CRS 24-30-202.4 (as amended), the State Controller may withhold debts owed to State agencies under the vendor offset intercept system for: (a) unpaid child support debt or child support arrearages; (b) unpaid balance of tax, accrued interest, or other charges specified in Article 21, Title 39, CRS; (c) unpaid loans due to the Student Loan Division of the Department of Higher Education; (d) owed amounts required to be paid to the Unemployment Compensation Fund; and (e) other unpaid debts owing to the State or any agency thereof, the amount of which is found to be owing as a result of final agency determination or reduced to judgment as certified by the State Controller.

G. **Employee Financial Interest CRS 24-18-201 & CRS 24-50-507.** The signatories aver that to their knowledge, no employee of the State of Colorado has any personal or beneficial interest whatsoever in the service or property described herein.

THE PARTIES HERETO HAVE EXECUTED THIS CONTRACT.

U.S. BANK NATIONAL ASSOCIATION ND
By U.S. Bancorp Card Services, Inc. Agent



Signature of Authorized Individual

Charles L. Wilkins
Senior Vice President

Federal Tax ID #: 41-1881896

CORPORATIONS:

Attest


Signature

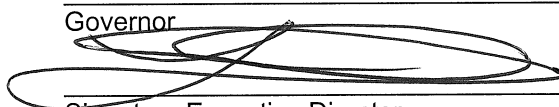
Kurt O. Dahl
Assistant Vice President

STATE OF COLORADO:

DEPARTMENT OF Personnel & Administration


Signature of Governor

Governor


Signature Executive Director

Linda Summets
Executive Director

LEGAL REVIEW:


Signature of Attorney General


Signature of Attorney General

For Ken Salazar
Attorney General

ALL CONTRACTS MUST BE APPROVED BY THE STATE CONTROLLER

CRS 24-30-202 requires that the State Controller approve all state contracts. This Contract is not valid until the State Controller, or such assistant as he may delegate, has signed it. The Contractor is not authorized to begin performance until this Contract is signed and dated below. If performance begins prior to the date below, the State of Colorado may not be obligated to pay for the goods and/or services provided.

STATE CONTROLLER:

 **ARTHUR L. BARNHART**
Signature of State Controller

(Name)

4/29/03
(Date)